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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,870	12/14/2001	Kunio Hotta		1773

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

# Office Action Summary

Application No.

10/014,870

Applicant(s)

HOTTA ET AL.

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 14 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 4 is objected to under 37 CFR 1.75(c) as being in improper form because of an improper dependent claim. See MPEP § 608.01(n). Claim 4 is directed to a subcombination, i.e. massage bar, that is different from parent claim, i.e. claim 3. It is noted that for examination purpose, claim 4 would be treated as a composition of a vibrating wave type oral cleansing and hygiene appliance.

### ***Claim Rejections - 35 USC § 112***

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "more especially" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 1 recites the limitation "the manner of vibrating" in lines 2-3 and "the external surfaces on the teeth" in line 4. There is insufficient antecedent basis for this limitation in the claim.

The terminology "can be" recite in claims 1-8 is indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sugimoto et al.

With regard to claims 1-2, 5 -8, Sugimoto et al discloses an oral hygiene instrument (figs. 1, 22) comprising a holder body (10) with a working section (6) disposed therein and an insert section (fig. 7, 6d) being as a columnar insert tenon situated at the front end for assembling a link rod (6a) in the manner of movable fix clamping, the free end of the link rod being designed as a floss bow section (fig. 22); the insert section can be disposed with an external elastic Y-shaped link member (72); the working section being preferred to be formed by using a long shaft motor (7) to drive an eccentric hammer (8).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto et al in view of Creed.

With regard to claims 3-4, Sugimoto et al discloses an oral hygiene instrument comprising all the claimed limitations in claim 1 as discussed above except for the insert section can be disposed with an external massage bar with a similar horseshoe shape. Creed discloses a device for treating gum (fig. 1) comprising a holder body (13) with a working section, an insert section with an external massage bar (37). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the massage bar as taught by Creed into the oral hygiene device of Sugimoto et al for the purpose of massaging the gum of the user and it would also have been an obvious matter of design choice to construct the massage bar having a similar horseshoe shape into the known device.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wagner and Gross et al are cited to show the state of the art with respect to a dental hygiene having a motor.

The drawings filed 12/14/2001 have been approved by the Examiner.

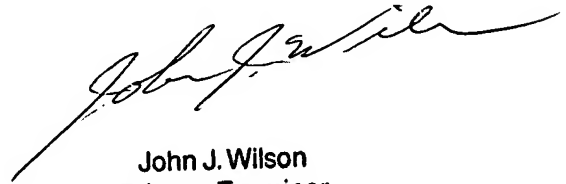
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Robyn Kieu Doan  
Examiner  
March 7, 2003



John J. Wilson  
Primary Examiner